



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL



1700 G Street NW, Washington, D.C. 20552

November 5, 2024

Hon. Jennifer H. Rearden, United States District Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007

Re: *CFPB v. Credit Acceptance Corp.*, No. 1:23-cv-00038

Dear Judge Rearden:

Plaintiffs Consumer Financial Protection Bureau and the New York Attorney General's Office write to notify the Court of recent authority rejecting an argument by Defendant Credit Acceptance Corp.'s in its Motion to Dismiss. *See* ECF Nos. 74, 75, 77, 82.

In *Consumer Financial Protection Bureau v. Active Network, LLC*, defendant Active Network—just like Defendant here—argued that a Bureau enforcement action could not move forward because the Bureau may draw funds from the Federal Reserve System only when the System generates net excess earnings. *See* Mot. to Dismiss at 22-24, *CFPB v. Active Network, LLC*, No. 4:22-cv-00898-ALM (E.D. Tex. June 17, 2024), ECF No. 28. The United States District Court for the Eastern District of Texas summarily rejected that argument and denied Active Network's motion. *See CFPB v. Active Network, LLC*, No. 4:22-cv-00898, 2024 WL 4437639, at *2 (E.D. Tex. Oct. 7, 2024).

In *Texas v. Colony Ridge, Inc.*, defendants likewise sought dismissal of claims brought under the Consumer Financial Protection Act (there, by the State of Texas under a provision authorizing states to enforce the CFPA, *see* 12 U.S.C. § 5552(a)) based on the same argument

that the Bureau cannot properly be funded when the Federal Reserve System is not generating net excess earnings. Texas opposed, arguing in part that the CFPA does not limit the Bureau to drawing funds only from the Federal Reserve's net excess earnings. On October 11, a magistrate judge of the U.S. District Court for the Southern District of Texas recommended denying the motion. *See State of Texas v. Colony Ridge, Inc., et al.*, No. H-24-0941, 2024 WL 4553111 (S.D. Tex. Oct. 11, 2024). Among other reasons, the magistrate judge noted that the Supreme Court in *CFPB v. Community Financial Services Ass'n of America, Ltd.*, 601 U.S. 441 (2024) had "found that the CFPB is constitutionally funded" during a time that Colony Ridge argued the CFPB was not properly funded. *See id.* at *4.

Finally, in *Consumer Financial Protection Bureau v. SoLo Funds, Inc.*, defendant SoLo Funds, Inc. also argued that the Federal Reserve System's lack of net excess earnings requires dismissal of the Bureau's case. The U.S. District Court for the Central District of California rejected that argument and denied the motion to dismiss. *See Consumer Fin. Prot. Bureau v. SoLo Funds, Inc.*, No. 2:24-CV-04108-RGK-AJR, 2024 WL 4553110, at *2, *6 (C.D. Cal. Oct. 17, 2024).

Sincerely,

By: /s/ Christopher L. Filburn (with consent)

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